

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DAVID TORREZ,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. 1:21-cv-00671-CDB (SS)

ORDER ON STIPULATION FOR AWARD  
OF ATTORNEY'S FEES PURSUANT TO  
THE EQUAL ACCESS TO JUSTICE ACT,  
28 U.S.C. § 2412(d)

(Doc. 32)

ORDER DENYING PLAINTIFF'S MOTION  
FOR ATTORNEY'S FEES AS MOOT

(Doc. 31)

Pending before the Court is the motion by counsel for Plaintiff David Torrez for attorney's fees pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d). (Doc. 31). Shortly after filing his motion, on April 30, 2025, Plaintiff filed a stipulated request for the award of attorney's fees pursuant to the EAJA in the amount of \$12,000.00 to counsel for Plaintiff, Jonathan O. Peña-Mancinas.<sup>1</sup> (Doc. 32).

The parties agree that an award of attorney's fees to counsel for Plaintiff should be made payable to Plaintiff, but if it is determined that Plaintiff assigned his right to EAJA fees to his attorney, does not owe a federal debt under the Treasury Offset Program ("TOP"), and Defendant agrees to waive the requirements of the Anti-Assignment Act (41 U.S.C. § 6305), then the

<sup>1</sup> Both parties have consented to the jurisdiction of a U.S. magistrate judge for all proceedings in this action, in accordance with 28 U.S.C. § 636(c)(1). (Doc. 11).

1 Commissioner shall cause the payment of fees to be made directly to Plaintiff's counsel, Jonathan  
2 O. Peña-Mancinas. (*Id.* at 2).

3 On January 24, 2025, the Court granted Plaintiff's motion for summary judgment and  
4 remanded the case to the Commissioner for further proceedings consistent with the order. (Doc.  
5 29). Judgment was entered the same day. (Doc. 30). Plaintiff is a prevailing party entitled to  
6 seek fees under EAJA. *See Shalala v. Schaefer*, 509 U.S. 292, 300-02 (1993) (concluding that a  
7 party who prevails with a sentence-four remand order under 42 U.S.C. § 405(g) is a prevailing  
8 party). Plaintiff's motion filing is timely. *Van v. Barnhart*, 483 F.3d 600, 607 (9th Cir. 2007).

9 The EAJA provides for an award of attorney fees to private litigants who both prevail in  
10 civil actions (other than tort) against the United States and timely file a petition for fees. 28  
11 U.S.C. § 2412(d)(1)(A). Under the EAJA, a court shall award attorney fees to the prevailing  
12 party unless it finds the government's position was "substantially justified or that special  
13 circumstances make such an award unjust." (*Id.*). Here, the government did not show its position  
14 was substantially justified and the Court finds there are not special circumstances that would  
15 make an award unjust. Moreover, the government does not oppose Plaintiff's stipulated request.  
16 *See Sanchez v. Berryhill*, No. 1:16-cv-01081-SKO, 2018 WL 509817, at \*2 (E.D. Cal. Jan. 23,  
17 2018) (finding position of the government was not substantially justified in view of the  
18 Commissioner's assent to remand); *Knyazhina v. Colvin*, No. 2:12-cv-2726 DAD, 2014 WL  
19 5324302, at \*1 (E.D. Cal. Oct. 17, 2014) (same).

20 In the parties' stipulated request, they agree that Plaintiff should be awarded \$12,000.00 in  
21 EAJA fees as authorized by 28 U.S.C. § 2412 and \$0.00 in costs as authorized by 28 U.S.C. §  
22 1920. (Doc. 32 at 1). The Ninth Circuit maintains a list of the statutory maximum hourly rates  
23 authorized by the EAJA, adjusted for increases in the cost of living, on its website. *See*  
24 *Thangaraja v. Gonzales*, 428 F.3d 870, 876-77 (9th Cir. 2005). Even assuming Plaintiff's  
25 counsel seeks the median of the published maximum rates associated with the years during which  
26 they engaged in services in this case (2020 to 2025; *see* Doc. 32-2 at 2-5), which the Court  
27 computes as \$234.95,<sup>2</sup> the requested award would amount to approximately 51 hours of attorney

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<sup>2</sup> *Statutory Maximum Rates Under the Equal Access to Justice*, available at  
<https://www.ca9.uscourts.gov/attorneys/statutory-maximum-rates/> (last visited May 1, 2025).

time (not accounting for any paralegal time expended). The Court finds this reasonable and commensurate with the number of hours an attorney would need to have spent reviewing the certified administrative record in this case (approximately 1076 pages; Doc. 17) and preparing a motion for summary judgment that includes 11 pages of argument (Doc. 24 at 9-20). Additionally, the amount is less than the billable hours represented by counsel in the declaration of Dolly Trompeter attached to the stipulated request. (Doc. 32-2). With respect to the results obtained, Plaintiff's counsel obtained a favorable judgment remanding the case for further proceedings. (Docs. 29, 30).

EAJA fees, expenses, and costs are subject to any offsets allowed under the Treasury Offset Program ("TOP"), as discussed in *Astrue v. Ratliff*, 560 U.S. 586 (2010). If the Commissioner determines upon effectuation of this order that Plaintiff's EAJA fees are not subject to any offset allowed under the TOP, the fees shall be delivered or otherwise transmitted to Plaintiff's counsel.

### **Conclusion and Order**

Accordingly, it is HEREBY ORDERED that:

1. Plaintiff's stipulated request for attorney's fees pursuant to the EAJA (Doc. 32) is GRANTED.
2. The Commissioner is directed to pay to Plaintiff as the prevailing party attorney's fees in the amount of \$12,000.00 pursuant to the terms set forth in the parties' stipulation. (Doc. 32). Fees shall be made payable to Plaintiff, but if the Department of the Treasury determines that Plaintiff does not owe a federal debt, then the government shall cause the payment of fees to be made directly to Plaintiff's counsel, as set forth in the stipulation.
3. In light of the parties' stipulation resolving the issue of counsel for Plaintiff's entitlement to fees, Plaintiff's motion for attorney's fees (Doc. 31) is DENIED as moot.

IT IS SO ORDERED.

Dated: May 1, 2025

  
UNITED STATES MAGISTRATE JUDGE